

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Lifeline and Link Up Reform and  
Modernization

WC Docket No. 11-42

Lifeline and Link Up

WC Docket No. 03-109

Federal-State Joint Board on Universal  
Service

CC Docket No. 96-45

Advancing Broadband Availability  
Through Digital Literacy Training

WC Docket No. 12-23

**PUBLIC UTILITY COMMISSION OF OREGON  
AND OREGON TELECOMMUNICATIONS ASSOCIATION**

**PETITION FOR PERMANENT WAIVER**

**NOVEMBER 25, 2013**

## I. INTRODUCTION

The Public Utility Commission of Oregon ("OPUC") and the Oregon Telecommunications Association ("OTA")<sup>1</sup> respectfully requests that the Federal Communications Commission ("FCC") grant a permanent waiver of the rules requiring the OPUC, as the state Lifeline administrator, to provide a copy of the Lifeline subscriber's certification form to the Eligible Telecommunications Carrier ("ETC") before that ETC can claim reimbursement from the federal universal service fund ("FUSF"). The specific rules at issue are 47 C.F.R. §§ 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.407(d). The OPUC and the OTA demonstrate herein that good cause exists to grant a permanent waiver.

## II. BACKGROUND

On April 2, 2012, the United States Telecom Association ("USTA") filed a petition<sup>2</sup> requesting that the FCC reconsider several decisions adopted in the *Lifeline Reform Order*.<sup>3</sup> Specifically, USTA requested that the FCC eliminate the rules in sections 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d). In its May 31, 2012 *Waiver Order*, DA 12-863, the FCC granted USTA's request for relief from these rules, but only until December 1, 2012.<sup>4</sup> On its own motion, the FCC expanded the waiver to the similar section 54.410(e) requirement that is applicable to specific state Lifeline administrators, including Oregon, until the same date.

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<sup>1</sup> The OTA comprises all of the incumbent local exchange carriers operating in Oregon and some competitive local exchange carriers. Exhibit A lists Oregon's incumbent local exchange carriers. Most OTA members are Eligible Telecommunications Carriers.

<sup>2</sup> See United States Telecom Association Petition for Reconsideration and Clarification, WC Dkt Nos. 11-42 et al. (filed April 2, 2012).

<sup>3</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Dkt Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("*Lifeline Reform Order*").

<sup>4</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Dkt Nos. 11-42 et al., Waiver Order, 27 FCC Rcd 5941 (Wireline Com. Bur. 2012) ("*May 2012 USTelecom Waiver Order*").

In an ex parte letter filed on November 16, 2012, Staff of the OPUC and the OTA explained why the notices required by 47 C.F.R. sections 54.410(b)(2)(ii) and 54.410(c)(2)(ii) are sufficient to meet the FCC's goals for Lifeline Reform, and that the requirements of 47 § C.F.R. 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.407(d) are unnecessary and burdensome when state administrators verify Lifeline subscriber eligibility. The letter also demonstrated good cause for granting a waiver of the rules to Oregon and its ETCs if the FCC decided to retain them.

On November 28, 2012, Staff of the OPUC and the California Public Utilities Commission ("CPUC") participated in a conference call with Staff of the FCC Wireline Competition Bureau.<sup>5</sup> The OPUC and CPUC Staff expressed concern about the expiration of the December 1, 2012, deadline granted in the *Waiver Order*, DA 12-863. The OPUC and CPUC Staff described the administrative aspects of Lifeline certification forms in their respective states and discussed options with the FCC, including the need to request an extension of the waiver past December 1, 2012.

On November 30, 2012, the OPUC and the OTA requested an extension of the waiver<sup>6</sup> of the FCC rules that had been granted in the FCC's May 2012 Waiver Order. The FCC granted the OPUC and the OTA's request for extended relief until June 1, 2013, in its December 21, 2012, *Waiver Order*.<sup>7</sup>

On March 4, 2013, Staff of the OPUC participated in a conference call with Staff of the FCC Wireline Competition Bureau and reiterated its support of USTA's Petition

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<sup>5</sup> Letter from Jon Cray, Residential Service Protection Fund Program Manager, Public Utility Commission of Oregon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. Nos. 11-42 et al., CC Dkt. No. 96-45, filed November 30, 2012.

<sup>6</sup> See Public Utility Commission of Oregon and Oregon Telecommunications Association Petition for Extension of Waiver, WC Dkt. Nos. 11-42 et al., CC Dkt. No. 96-45 (filed November 30, 2013).

<sup>7</sup> See *Lifeline and Link Up Reform and Modernization*, WC Dkt. No. 11-42, Waiver Order, 27 FCC Rcd 15922 (Wireline Comp. Bur. 2012) (*Dec. 2012 USTelecom Waiver Order*).



for Reconsideration for the FCC to amend its rules by eliminating the requirement that state Lifeline administrators provide a copy of the Lifeline subscriber's certification form to the ETC.<sup>8</sup>

The OPUC and the OTA filed comments<sup>9</sup> on May 15, 2013, in support of USTA's May 6, 2013, Petition for Waiver.<sup>10</sup> In addition, the OPUC and the OTA requested that if the FCC granted the USTA's Petition for Waiver, it would also grant the same to the OPUC and Oregon ETCs. On August 30, 2013, the FCC found good cause to grant a limited waiver of 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.407(d) to specific states, including the OPUC and ETCs operating in Oregon until February 1, 2014.<sup>11</sup> The FCC required each state and the OPUC to file a status update with the Wireline Competition Bureau explaining the steps it has taken to bring its processes into compliance with these rules. However, the FCC informed states or ETCs to seek a permanent waiver from the rules if it believes it will be unable to come into compliance. Accordingly, Staff of the OPUC submitted a status report on November 4, 2013, notifying the FCC that the OPUC and the OTA will file a petition for a permanent waiver of these rules explaining why relief from these rules is appropriate for Oregon.<sup>12</sup>

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<sup>8</sup> Letter from Jon Cray, Residential Service Protection Fund Program Manager, Public Utility Commission of Oregon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 et al., CC Dkt. No. 96-45 filed March 7, 2013.

<sup>9</sup> See Public Utility Commission of Oregon and Oregon Telecommunications Association Comments in Support of USTelecom Petition for Waiver and Petition for Extension of Waiver, WC Dkt Nos. 11-42 et al. (filed May 15, 2013).

<sup>10</sup> See Petition for Waiver of the United States Telecom Association, WC Dkt Nos. 11-42 et al. (filed May 6, 2013).

<sup>11</sup> See *Lifeline and Link Up Reform and Modernization* et al., WC Dkt No. 11-42, Waiver Order, DA 13-1853 (Wireline Com. Bur. 2013) (*August 2013 USTelecom Waiver Order*).

<sup>12</sup> Letter from Jon Cray, Residential Service Protection Fund Program Manager, Public Utility Commission of Oregon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42, filed November 4, 2013.

### III. BASIS FOR PERMANENT WAIVER

As explained in the November 16, 2013, ex parte letter, the OPUC and the OTA believe that a permanent waiver for Oregon from the requirements set forth in C.F.R. § 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.407(d) is appropriate since there are special conditions that warrant deviation from these rules and such deviation will serve the public interest. The OPUC and the OTA also believe that these rules which require state Lifeline administrators to provide subscriber certification forms to ETCs are unnecessary and cost prohibitive in Oregon.

In the May 31, 2012, *Waiver Order*, DA 12-863, the FCC stated that the objective of the certification requirements “are aimed at ensuring that ETCs only seek reimbursement for subscribers who have executed a certification form attesting to their compliance with the Lifeline program requirements.”<sup>13</sup> Footnote 14 of the same *Waiver Order* further clarifies that the purpose of the revised certification requirements is to reduce the number of ineligible consumers in the Lifeline program. However, the *Waiver Order* acknowledges that state Lifeline administrators must obtain executed certification forms from subscribers pursuant to section 54.410(d) and send notifications to the ETCs pursuant to sections 54.410(b)(2)(ii) and 54.410(c)(2)(ii). That notification provision accomplishes the same objective of the certification requirements in Oregon. Electronic notification from the OPUC, as the state Lifeline administrator, to the ETCs operating in Oregon is a quicker and more efficient means to trigger reimbursement qualification than requiring the ETCs to wait for copies of individual forms and match those to the electronic notifications that would precede the forms. Requiring the OPUC to provide copies of the certification forms to the ETCs does nothing to enhance the

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<sup>13</sup> See para. 5.

validity of the subscriber's eligibility for Lifeline,<sup>14</sup> but adds to the burden and costs to both the OPUC and the ETCs. Importantly, it will result in an unnecessary lag in delivery of Lifeline benefits to eligible consumers.

In footnote 13 of the *Waiver Order*, the FCC addresses two specific conditions for waiving its rules if good cause is shown and explains that it may take into account certain considerations including "more effective implementation of overall policy on an individual basis." In cases such as Oregon's where the state Lifeline administrator serves a special function that benefits ETCs and Lifeline customers, granting of the requested permanent waivers would result in more effective and efficient implementation than the current rules.

The first condition is that special circumstances warrant a deviation from the general rule. Oregon's role in the state administration of Lifeline is a special circumstance that warrants deviation. The OPUC is in partnership with the FCC to provide Lifeline to eligible customers in the most efficient manner while protecting against waste, fraud and abuse. The fact that Oregon verifies applicants' eligibility and performs checks to eliminate duplicate Lifeline benefits presents a special case compared to states where the ETCs are solely responsible for the same functions. Again, the objective of the requirement to provide copies to the ETCs, i.e., reducing the number of ineligible consumers in Lifeline, is not relevant in Oregon. Incidences of waste, fraud and abuse are minimized by use of the OPUC processes that are already in place.

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<sup>14</sup> As USTA points out in its Petition, the ETCs' receipt of the actual verification forms serves no useful purpose given the electronic notification of eligibility from the state Lifeline administrator. See USTA Petition, page 6.



In Oregon, after a Lifeline applicant submits a completed OPUC-specific certification form to the OPUC, Staff verifies the consumer's initial (and ongoing) eligibility via real-time access to the Oregon Department of Human Services database.<sup>15</sup> Simultaneously, the OPUC Staff utilizes a centralized database<sup>16</sup> that contains the records of all Lifeline subscribers for all ETCs, wireline and wireless, eliminating the potential for duplicate claims of support.

A weekly report that lists all Lifeline consumers approved by the OPUC is electronically transmitted to the applicant's respective ETC. The approval report contains the consumer's first and last name, residential address, phone number, effective approval date, and OPUC-assigned identification number in lieu of their social security number. This approach to notification not only minimizes waste, fraud and abuse, but protects and safeguards the confidential and personal identifying information (i.e. social security number) of eligible Lifeline subscribers.<sup>17</sup> The OPUC's weekly electronic notification to the ETC is comparable to the certification form and provides

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<sup>15</sup> The qualifying programs in the Oregon Department of Human Services database include Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Medicaid and specific Oregon Health Plans for which eligibility requirements limit participation to individuals with income that does not exceed one hundred thirty-five percent of the federal poverty guidelines. Consumers applying for Lifeline on the basis of their participation in the National School Lunch Program's free lunch program, Federal Public Housing Assistance, Low-Income Home Energy Assistance Program (LIHEAP) or solely on income or factors directly related to income at or below one hundred thirty-five percent of the federal poverty guidelines must submit appropriate documentation of eligibility to the OPUC.

<sup>16</sup> The OPUC's petition to opt-out of the FCC's National Lifeline Accountability Database for preventing Lifeline duplicative support went into effect by default, i.e., without FCC (Wireline Comp. Bur.) action. See Petition and Certification of the Public Utility Commission of Oregon to Opt-Out of the National Lifeline Database, WC Dkt. Nos. 11-42 et al., CC Dkt. No. 96-45 (filed Nov. 30, 2012).

<sup>17</sup> The OPUC modified its processes slightly to accommodate the growth in certification forms due to the initial introduction of Lifeline services by Assurance Wireless (Virgin Mobile) and SafeLink Wireless (TracFone). These two ETCs collect and review certification forms from their potential Lifeline consumers and send copies to the OPUC. However, the OPUC still verifies eligibility and checks for duplicates, as it does for all other ETCs. No ETC is authorized to claim reimbursement from the FUSF until receiving notification of eligibility back from the OPUC.

sufficient safeguards for the ETC to begin providing the corresponding Lifeline benefits and apply for reimbursement from the FUSF.

Although ETCs have an obligation to maintain records to document compliance with all Lifeline program requirements pursuant to C.F.R. § 54.417, the notice provided by the OPUC can serve as appropriate documentation for the ETCs, while the OPUC will retain, and provide upon request, the actual Lifeline certification forms in order to meet this requirement. The OPUC is prepared to comply with the required retention period for certification forms set forth by the FCC and has electronic and physical facilities to accommodate these certification forms. In addition, the OPUC agrees to provide the certification forms to the ETC, FCC and the Universal Service Administrative Company if needed for audit purposes.

The OPUC processes comply with all FCC rules for certification forms, eligibility and verification, thereby saving resources of the ETCs and ensuring an optimal result. All of the conditions for a customer's eligibility are met when the OPUC sends electronic notification of eligibility to the ETC.

The second requirement for a waiver is that such deviation will serve the public interest. The OPUC listed the estimated costs for developing and maintaining a secure electronic means of transmitting certification forms to each ETC in its May 15, 2013, Petition for Extension of Waiver. In accordance with the Oregon Identity Theft Protection Act,<sup>18</sup> the OPUC is responsible for safeguarding customers' personal identifying information (i.e., social security number). Any loss, theft, or breach event must be reported to all affected persons and if more than 1,000 consumers are affected or other specific conditions are met, the OPUC may be required to notify law

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<sup>18</sup> See Oregon Revised Statute 646A.600 – 646A.628.



enforcement, national consumer reporting agencies, and the news media. The OPUC is averse to adopting a manual approach in which a full-time temporary employee is hired to photocopy upwards of 4,000 (and growing) monthly physical certification forms and print online certification forms to mail weekly to thirty-nine (39) ETCs operating in Oregon. The certification forms contain the customer's full social security number and the risk of theft or loss becomes of paramount concern when handled by multiple individuals.

To implement an electronic solution that protects and safeguards the confidential and personal identifying information of eligible Lifeline subscribers, the OPUC would be required to host and maintain a File Transfer Protocol ("FTP") to transmit certification forms to the ETCs. The following table lists the estimated initial development and maintenance costs:

<b><u>Initial Development</u></b>	
Hardware, Software, License, Maintenance	\$10,800
Personnel, Programming and Testing	\$14,100
Subtotal:	\$24,900
<b><u>Maintenance</u></b>	
Annual maintenance, troubleshooting, personnel	\$76,100
Yearly maintenance fees	\$1,300
Subtotal:	\$77,400
<b>TOTAL:</b>	<b>\$102,300</b>

The FTP solution cannot be fully executed unless the OPUC recruits and employs a data imaging specialist to scan and attach copies of the certification forms to the individual customer records in the OPUC database. However, the OPUC cannot recruit and hire a data imaging specialist to perform these functions unless the OPUC petitions the 2015 Oregon Legislature for approval to establish and procure funding in

the amount of \$102,435, which includes salary, benefits, taxes, etc. per biennium. Ultimately, the OPUC may expend at least \$128,617.50 after the initial development per year to comply with the requirement of providing copies of the certification forms to the customers' respective ETCs. The overall cost would be borne by Oregon ratepayers through the Residential Service Protection Fund surcharge, which may potentially increase as a result.<sup>19</sup>

The manual or electronic solution would compel various ETCs to incur costs that range from several hundred additional dollars to \$10,000 monthly to acquire electronic and physical resources to maintain Lifeline certification forms. These extra costs to the OPUC, ETCs and consumers may be deemed worthwhile if supplying copies of the forms to the ETCs achieved the objectives of the Lifeline Reform Order that could not be achieved otherwise, but that is not the case in Oregon. Therefore, it is not in the public interest to impose costly, duplicative and burdensome requirements on the OPUC, the OTA, and other ETCs operating in Oregon.

#### **IV. CONCLUSION**

In conclusion and for the reasons explained above, the OPUC and the OTA respectfully request that the FCC grant a permanent waiver of sections 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.407(d) of its rules.


Respectfully submitted,

THE PUBLIC UTILITY COMMISSION  
OF OREGON

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<sup>19</sup> Administrative costs for Lifeline in Oregon is funded by the Residential Service Protection Fund surcharge that is levied on wireline and wireless customers who have voice telephony service.

  
Susan Ackerman  
Chair

  
Stephen Bloom  
Commissioner

  
John Savage  
Commissioner

THE OREGON TELECOMMUNICATIONS ASSOCIATION

  
Brant Wolf  
Executive Vice President



## Exhibit A

### Oregon Telecommunications Association Members

Asotin Telephone Company d/b/a TDS Telecom  
Beaver Creek Cooperative Telephone Company  
Canby Telephone Association d/b/a Canby Telecom  
Cascade Utilities, Inc., d/b/a Reliance Connects  
Century Tel of Oregon, Inc., d/b/a Century Link  
CenturyTel of Eastern Oregon, Inc., d/b/a CenturyLink  
Clear Creek Telephone & Television  
Colton Telephone Company, d/b/a ColtonTel  
Eagle Telephone System, Inc.  
Frontier Communications Northwest, Inc.  
Gervais Telephone Company  
Helix Telephone Company  
Home Telephone Company d/b/a TDS Telecom  
Midvale Telephone Exchange  
Molalla Communications, Inc. d/b/a Molalla Communications  
Monitor Cooperative Telephone Company  
Monroe Telephone Company  
Mt. Angel Telephone Company  
Nehalem Telecommunications, Inc., d/b/a RTI Nehalem Telecom  
North-State Telephone Co.  
Oregon-Idaho Utilities, Inc.  
Oregon Telephone Corporation  
People's Telephone Co.  
Pine Telephone System, Inc.  
Pioneer Telephone Cooperative  
Qwest d/b/a Century Link  
Roome Telecommunications Inc.  
St. Paul Cooperative Telephone Association  
Scio Mutual Telephone Association  
Stayton Cooperative Telephone Company  
Trans-Cascades Telephone Company, d/b/a Reliance Connects  
United Telephone Company of the Northwest d/b/a CenturyLink